

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

MARIELA PEREZ, on
behalf of herself and all others
similarly situated,

Plaintiff,

VS.

CAUSE NUMBER: 1:19-cv-00724

MCCREARY, VESELKA, BRAGG
& ALLEN, P.C., MVBA, LLC, f/k/a
MCREARY, VESELKA, BRAGG
& ALLEN, L.L.C.,
and JOHN DOES,

Defendants.

PLAINTIFF'S MOTION TO STRIKE DEFENDANTS' OFFER OF JUDGMENT

Plaintiff Mariela Perez files her Motion to Strike Defendants' Offer of Judgment. This Court has held that such an offer of judgment in a class action may be stricken. *Boles v. Moss Codilis, LLP*, No. SA-10-CV-1003-XR, 2011 WL 4345289 (W.D. Tex. Sept. 15, 2011). In support of this Motion. Plaintiff states the following:

1. Mariela Perez filed this class action on July 19, 2019 to enforce the Fair Debt Collection Practices Act (“FDCPA”) 15 U.S.C. § 1692 *et seq.* for Defendants’ alleged violations of the Act. This case is brought on behalf of all persons in Texas who are similarly situated pursuant to 15 U.S.C. §1692k(a)(2)(B).

2. On or about December 18, 2019, Defendants McCreary, Veselka, Bragg & Allen, P.C. and Mccreary, Veselka, Bragg & Allen, LLC tendered a Rule 68 Offer of Judgment (“the Offer”). A copy is attached hereto as Exhibit A.

3. The Offer consists of a judgment in favor of Mariela Perez individually in the amount of \$20,000.00, (Offer at ¶1)

4. Discovery has just commenced in this litigation, and Defendants have not yet provided responses to Plaintiff’s written discovery.

5. Defendants attempt to use their Rule 68 Offer to moot Ms. Perez’s claims as well as the claims of the putative class.

6. Defendants’ Offer fails because it does not provide complete relief for the putative class.

7. Ms. Perez has not unduly delayed progression this case as the Complaint was only filed on July 19, 2019. (Doc. No. 1)

9. Plaintiff respectfully requests that Defendants’ Offer of Judgment be stricken and declared to be of no effect in this case.

10. Plaintiff’s Memorandum in Support of this Motion is filed contemporaneously with the Motion.

Respectfully Submitted by:

Mariela Perez, on behalf of herself and
all other similarly situated,
Plaintiff,

By: /s/ O. Randolph Bragg
O. Randolph Bragg
HORWITZ, HORWITZ & ASSOC.
25 East Washington St., Suite 900
Chicago, IL 60602
(312) 372-8822
(312) 372-1673 (FAX)
E-mail: rand@horwitzlaw.com

/s/Brent A. Devere
Brent A. Devere
SBN#00789256
1411 West Avenue, Suite #200
Austin, Texas 78701
Ph: 512-457-8080 Fax: 512-457-8060
Email: BDevere@1411west.com

ATTORNEYS FOR THE PLAINTIFF
AND THE PUTATIVE CLASS

CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2019 I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to all counsel of record.

By: /s/ O. Randolph Bragg
O. Randolph Bragg